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In the Supreme Court of the United States

October Term, 1974

No. 74-1634

FORREST P. WILEY,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Send All Notices to:
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Murrelle Printing Co., Law Printers, Box 100, Sayre, Pa. 18840

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OTHER AUTHORITIES:

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Motor Vehicle Code, Section 1002(b) 9

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Sixth Amendment 4

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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1974
No.

FORREST P. WILEY,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

Petitioner respectfully prays that a writ of Certiorari be granted to review the final order of the Supreme Court of The State of Pennsylvania entered on February 3, 1975, denying petition for allowance after the judgment of sentence of the Court of Common Pleas, Criminal, of Northampton County, No. 159 August Term, 1973, was affirmed by the Superior Court of Pennsylvania; ruling in favor of the State of Pennsylvania and against the petitioner on his appeal from a judgment adverse to him.

OPINION BELOW

Attached hereto as Appendix "A" is The August 8, 1974 decision of the Superior Court of Pennsylvania, affirming the judgment of the trial Court below rendered in favor of the Commonwealth of Pennsylvania.

JURISDICTION

The Petition for Allowance of Appeal from Superior Court was denied February 3, 1975 and is appended hereto as Appendix "B". The jurisdiction of this Court is invoked under *United States Code* Sec. 1257 (3) which provides that final judgments on decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court:

> "By writ of certiorari, where the validity of a treaty or a statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commissions held or authority exercised under, the United States."

QUESTIONS PRESENTED

1. Was sufficient evidence presented to support a conviction of an on-view arrest for speeding?

2. Did denial of counsel by Justice of Peace violate the constitutional rights of the petitioner?

3. Were the records of the Magistrate defective under Pennsylvania Code?

4. Has the Supreme Court of Pennsylvania rendered a decision in conflict with the decision of another court on the same matter?

5. Does the part-time enforcement of speeding regulations provide equal protection under the provisions of the *Fourteenth Amendment of the United States Constitution?*

6. Does the random selection of speeding violations allow for wide spread discrimination and deprivation of the petitioner's constitutional rights as set forth in the *Fourteenth Amendment of the United States Constitution?*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Assistance of counsel clause of *Sixth Amendment, United States Constitution,* text in Appendix "E", attached hereto.

2. Due process clause of the *Fourteenth Amendment, United States Constitution,* text in Appendix "F", attached hereto.

3. Rights of Accused clause of *Article 1, Sec. 9, Constitution of the Commonwealth of Pennsylvania,* text in Appendix "G".

STATEMENT OF THE CASE

Trooper Moser has testified that starting at Route 191, he clocked the petitioner at 72 miles per hour in a 60 mile zone. As evidence thereof, he stated that his speedometer registered 72 miles per hour and presented a certificate of accuracy which indicated that his speedometer had been checked in the past 30 days. This testimony, together with the certificate of accuracy, is rather conclusive that Trooper Moser was doing 72 miles per hour but in no way relates to the speed at which the petitioner was traveling, and in no proceeding has such evidence surfaced.

Use of the term "clocked" has gone unchallenged by the defense and undefined by the prosecution, the courts and the statutes. No testimony has been given which indicates the distance between the petitioner and the Trooper when he began "clocking" nor does the record show what distance existed at the end of the mile during which the petitioner was allegedly speeding. Without these facts there is no way to conclude that the petitioner was speeding. Further, since the distance is unknown, there is no way of knowing whether the distances in question are within the range of human reliability; thus considerable doubt as to the credibility of this testimony is evident.

Trooper Moser entered Route 22 some distance, one-quarter to one-half mile behind the petitioner in heavy traffic in which a large number of trucks were the speed

controlling factor. It should be kept in mind that the distance of one-quarter mile is more than four football fields end-to-end. Obviously, Trooper Moser would have to travel at a faster speed than the petitioner in order to overtake him.

Not only does the Trooper conflict in his testimony with that of the petitioner but he also conflicts with his own testimony. In the criminal complaint signed by Trooper Moser the offense is said to have occurred between Route 191 and 25th Street Exit yet the testimony set forth states that the offense occurred 1 mile East of Route 191.

The petitioner has testified that he overtook a green pick-up truck doing approximately 58 miles per hour just after passing the Route 191 intersection. He stated that he could not pass the truck as he himself was being passed by a procession of three vehicles. Assuming that they were going no faster than 60 miles per hour, it would take approximately 100 seconds for such a procession to pass the petitioner, in which time he would have traveled a distance of 1.5 miles. The petitioner reaffirms that at no time did he exceed 60 miles per hour and the foregoing testimony, corroborated in part by Trooper Moser, supports this contention.

Upon appearance before Magistrate Auch, the petitioner was advised that he could enter a plea of guilty in which case the fine would be $15.00, or plead not guilty in which case he could request an immediate hearing or post bail of $20.00 and request a hearing at a later date.

The petitioner entered a plea of not guilty and requested a trial at a later date. The Magistrate asked when the petitioner would be in the area again and was informed of that date. He stated that such a date was not within the time limit prescribed. He inquired further of Trooper Moser what his availability was on the date and the following date, whereupon he was advised that he would be unavailable or on break. The Magistrate then said that it appeared that a hearing would have to be held immediately. The petitioner stated that he would like to exercise his right to have counsel and the Magistrate stated that the hearing could be held at 1:30 (possibly 2:30). The petitioner replied that the interim was insufficient to seek counsel. It was then that the Magistrate directed Trooper Moser and the petitioner to the court room.

The petitioner prior to his testimony requested that the record show that the hearing was being held under protest and that he had been denied the right to seek counsel.

The Magistrate made no such record of this request and transcripts later presented did not reflect the violation.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The on-view arrest was unsupported by evidence other than conclusions on the part of the State Trooper.

2. The Court below failed to establish the distance between the State Trooper's vehicle and that of the petitioner and that this distance was constant during the time that the petitioner's vehicle was being clocked.

3. The Court below failed to establish that the view between the two vehicles was unobscured during the time that the petitioner's vehicle was being clocked.

4. In hearing criminal complaint, Justice of the Peace without warning and over petitioner's protests, forced him to plead to the information without the aid and advice of counsel, whose assistance was requested.

5. The Magistrate's record must show that an opportunity of immediate hearing or of posting of bail for hearing within 10 days of date of arrest, was extended to defendant. *Commonwealth vs. Chistensen,* 12 Chest. 107, 1964.

6. Where an information filed before an alderman charges an offense, which is a violation of the Motor Vehicle Code, but the record does not show that the offense occurred within the territorial jurisdiction of the alderman by a positive finding, or by reference to the complaint as true, the record of the alderman is fatally defective, and the judgment of the alderman will be reversed

and set aside on certiorari: *Commonwealth vs. Fegley,* 35 Northumb. L. J. 1, 1964.

7. Where transcript of the record of a Justice of the Peace forwarded to the court on certiorari in a proceeding charging violation of Section 1002 (b) of this title, fails to set forth any of the testimony taken before the Justice, defendant's exceptions thereto will be sustained and the conviction reversed, since the record must not only affirmatively show the jurisdiction of the justice but it must also be full, complete, regular and accurate on its face. *Commonwealth vs. Battistella,* 34 D. & C. 2d 201, 46 West. 127, 1965.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted.

FORREST P. WILEY,
Petitioner
8408 Barron Street
Washington, D. C. 20012

APPENDIX A

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 698 October Term, 1974

Commonwealth of Pennsylvania

vs.

Forrest P. Wiley,

Appellant

Appeal from the Judgment of Sentence of the Court of Common Pleas, Criminal, of Northampton County, at No. 159 August Term, 1973.

Per Curiam: Filed: August 8, 1974

Judgment of sentence affirmed.

APPENDIX B

SUPREME COURT OF PENNSYLVANIA
Eastern District

Philadelphia 19107
February 4, 1975

Mr. Forrest P. Wiley
8408 Barron Street
Washington, D. C. 20012

In re: Commonwealth of Pennsylvania v.
Forrest P. Wiley, Petitioner.
No. 1620 Allocatur Docket

Dear Sir:

Please be advised that the Court has entered the following Order on the Petition for Allowance of Appeal from Judgment of the Superior Court in the above captioned matter:

"Petition Denied this 3rd day of February, 1975
Per Curiam."

Very truly yours,
Sally Mrvos
Prothonotary

SMM:mb
CC: Robert A. Freedberg, Esq.

APPENDIX C

No. 159 August Term 1973

Commonwealth

vs.

Forrest P. Wiley

Sur Charge Appeal (Speeding Violation)

And Now, October 19th, 1973 letter filed Stateing [sic], since the appeal was not taken within ten (10) days as required by the Minor Judiciary Court Appeal Act, Walter Auch Jr. request that the appeal be stricken and this Court not be required to send it a transcript. Date of conviction 9-18-73 by Walter Auch Jr. District Magistrate District 03-02-09. filed.

And Now February 6, 1974 defendant before the Court for appeal. Same day defendant adjudged guilty as charged. The sentence of the Court is the defendant to pay the cost of prosecution, pay a fine of $10.00 and stand committed until this sentence is complied with.

Alfred T. Williams, Jr. Judge

Defense Atty: Freedberg

Appendix C

State of Pennsylvania
County of Northampton, ss:

I, John Choma, Jr., Clerk of the Court of Common Pleas, Criminal Division of Northampton County, Pennsylvania, do hereby certify that the above and foregoing is a true and correct Transcript of the sentence of the Court made and entered of Record in the office of the Clerk of said Courts in the above entitled case, so full and entire as the same remains on file and of record in said office at Easton, Northampton County, Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts, at Easton, Northampton County, Pennsylvania, this 27th day of February A.D. 1974.

John Choma, Jr.
Per M. M.
Clerk of the Court of Common Pleas
Criminal Division of Northampton
County

APPENDIX D

Summary of Testimony Continued:

Proceedings

And now Sept. 18, 1973 the defendant, Forr
Wiley was arrested on view by the P.S.P. On rest Parks
1973 Tpr. Moser filed a criminal complaint for Sept. 18,
and brought before me, Walter F. Auch Jr. Justi speeding
Peace at my court located at Rt. 248 & Van Bu ice of the
in Palmer Twp. The charge was read to the ren Road
and he entered a pleas of Not Guilty, an imme defendant
was held. Witness for the Commonwealth Tp diate trial
E. Moser P.S.P. Easton Barracks (Sworn) the r. Harold
was permitted to cross examine the witness. defendant
sworn on behalf of the Defendant, Forrest Par Witness

And now Sept. 18, 1973 having heard al ks Wiley.
dence offered, there*foe* it is adj*i*dged by me the l the evi-
tice of the Peace that the defendant Forrest Pa said Jus-
is guilty of the of*fese* of Speeding section 100 rks Wiley
9 of the vehicle code of Penna. 72 in a 60 Zo 2-b Parg.
hereby sentence the said defendant to pay a fine ne, and I,
and costs of $10.00 and in default of such fin of $10.00
to spend 5 days in the Northampton County ja e & costs
costs paid Sept. 18, 1973. il, Fine &

Fine paid to Bethlehem Twp. in monthly r
costs remitted to Northampton County. report and

And now October 5, 1973 received a not
peal from summary conviction by Airmail regis ice of ap-
tered mail

receipt requested, and now, Oct 18, 1973, sent a letter to the Northampton county court requested appeal to be stricken as appeal was not taken in time.

Attorney John J. Segata, phoned from the D.A. Office requesting this transcript.

I, the above issuing authority, certify the above statements and complaint is a true and correct transcript of the original docket and so certify this 7th. day of November, 1973.

(s) Walter F. Auch,
Justice of the Peace.
My Commission expires Jan. 5 1976
Magisterial District 03-02-09

Number Term 19

Return To
Court of Common Pleas
Commonwealth of Pennsylvania

vs.

Forrest Parks Wiley, 8408 Barron St., Silver Springs, Maryland

DEFENDANT (S)

TRANSCRIPT
From The Docket of Walter F. Auch Jr. Justice of the Peace

Filed in the Office of the Clerk of Courts
On 19
On 19 the

EED THROUGH

Appendix D

Defendant and his bail being called three times in open Court and not appearing the Recognizance was absolutely forfeited.

Attest

Clerk of Courts

Attorney for Prosecutor

Attorney for Defendant

CERTIFICATE OF SERVICE

I, FORREST P. WILEY, petitioner herein, hereby certify that, on the 5th day of May, 1975, I served three (3) copies of the foregoing Petition for a Writ of Certiorari to the Supreme Court of the State of Pennsylvania on the attorney for respondent as follows:

By depositing said copies, in a duly addressed envelope, in the United States Mail at Washington, D.C., with postage prepaid, addressed to:

Robert A. Freedberg
Assistant District Attorney
Northampton County Court House
Easton, Pennsylvania 18042

This constitutes service on all parties.

(s) Forrest P. Wiley
Petitioner
8408 Barron Street
Washington, D.C. 20012